

summary judgment in favor of BST as to that count. However, with respect to Count Two, the Court finds that a limited declaration will clarify the parties' legal relations and prevent future litigation. The Court therefore finds it appropriate under the undisputed facts to grant Metro's motion for summary judgment as to Count Two and to deny BST's motion for summary judgment on that issue.

Accordingly, the Court orders as follows:

1. Metro's motion for summary judgment (Doc. No. 27) as to Counts One and Three is hereby **DENIED**, and its motion as to Count Two is hereby **GRANTED**. Judgment as to Count Two is entered in favor of Metro, and, in accordance with Count Two's request for a declaration, the Court finds and declares as a matter of law that:

(a) Under Tennessee common law, in the absence of a valid reimbursement statute or contract, Metro has the police power to require BST to relocate its lines and facilities from public rights-of-way, at BST's expense, to accommodate public works reasonably necessary to benefit the public welfare, regardless of whether they benefit the so-called "traveling public," whether pedestrian or vehicular.

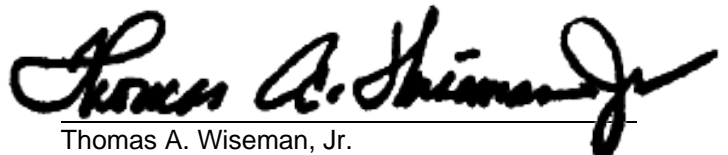
(b) Tenn. Code Ann. § 65-20-202 is not a reimbursement statute. It simply authorizes the establishment and maintenance of telephone facilities in public rights-of-way.

2. BST's motion for summary judgment (Doc. No. 30) as to Counts One and Three of Metro's complaint is hereby **GRANTED**, and judgment as to Counts One and Three is entered in favor of BST. BST's motion for summary judgment as to Count Two is hereby **DENIED**, judgment on that Count having been entered in favor of Metro.

This matter is thus concluded, and this Order constitutes a final judgment for purposes of Fed. R. Civ. P. 58 from which an appeal may lie.

Each party shall bear its own costs in this matter.

It is so **ORDERED**.


Thomas A. Wiseman, Jr.
Senior U.S. District Judge